



European Bank
for Reconstruction and Development

**CONDITIONS OF CONTRACT
FOR
CONSULTANCY SERVICES**

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General Conditions of Contract

Consultancy Services

Preamble

This publication represents the General Conditions of Contract for Consultancy Services modelled upon the respective harmonised contract conditions developed by the Multilateral Development Banks.

These General Conditions of Contract, read in conjunction with the Particular Conditions and other documents listed therein, should constitute a complete document expressing all the rights and obligations of the parties.

Any changes and complementary information, which may be needed, shall be introduced through the Particular Conditions of Contract, which shall complement the General Conditions, specifying contractual requirements linked to the special circumstances of the Client, the Client's country, the sector, the project and the consultancy services being procured.

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GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include the Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

- 1.1.1.1 “Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Requirements, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.
- 1.1.1.2 “Contract Agreement” means the Contract agreement referred to in Sub-Clause 1.6.
- 1.1.1.3 “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- 1.1.1.4 “Contract Price” means the price payable to the Consultant as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- 1.1.1.5 “GCC” means the General Conditions of Contract.
- 1.1.1.6 “Letter of Acceptance” means the letter of formal acceptance, signed by the Client, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving of the Letter of Acceptance means the date of signing the Contract Agreement.
- 1.1.1.7 “Letter of Tender” means the document entitled Letter of Tender, which was completed by the Consultant and includes the signed offer to the Client for provision of the Services.
- 1.1.1.8 “PCC” means the Particular Conditions of Contract.
- 1.1.1.9 “Requirements” means the document entitled requirements, as included in the Contract, and any additions and modifications to them in accordance with the Contract.
- 1.1.1.10 “Schedule” means the document(s) entitled schedules, completed by the Consultant and submitted with the Tender, as included in the Contract. Such document(s) may include the Price Schedule, data, lists, or other schedules, referred to in the Contract.
- 1.1.1.11 “Services” means the services and activities to be performed by the Consultant pursuant to the Contract, as defined in the Requirements and proposed by the Consultant in the Tender as per Schedule, Scope of Services, appended to the Contract.
- 1.1.1.12 “Tender” means the Letter of Tender, the Consultant’s proposal and all other documents, which the Consultant submitted with the Letter of Tender, as included in the Contract.

1.1.2 Parties and Persons

- 1.1.2.1 “Client” means the person named as the client in the PCC and the legal successors in title to this person.
- 1.1.2.2 “Consultant” means the person(s) named as Consultant in the Letter of Tender accepted by the Client and the legal successors in title to this person(s).
- 1.1.2.3 “Consultant’s Personnel” means all personnel whom the Consultant engage for implementation of the Contract, who may include the Experts, staff and other employees of the Consultant and of each Subcontractor.
- 1.1.2.4 “Expert” means personnel of the Consultant or its Subcontractor, assigned by the Consultant to perform the Services or any part thereof under the Contract.
- 1.1.2.5 “Key Expert” means an individual Expert whose skills, qualifications, knowledge and experience are critical to the performance of the Services.
- 1.1.2.6 “Party” means the Client or the Consultant, as the context requires.
- 1.1.2.7 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for rendering a part of the Services; and the legal successors in title to each of these persons.

1.1.3 Dates and Periods

- 1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 “Commencement Date” means the date, from which the Time for Completion, as well as periods for fulfilling other Consultant’s obligations under the Contract are calculated.
- 1.1.3.3 “day” means a calendar day and “year” means 365 days.
- 1.1.3.4 “Effective Date” means the date on which this Contract comes into force and effect pursuant to Sub-Clause 2.1.
- 1.1.3.5 “Time for Completion” means the time within which completion of the Services as a whole (or of a part thereof, where a separate Time for Completion of such part has been specified) is to be attained, as referred to in Sub-Clause 4.3 and in accordance with the relevant provisions of the Contract.

1.1.4 Other Definitions

- 1.1.4.1 “Client’s Country” is the country specified in the PCC.
- 1.1.4.2 “Completion Certificate” means the certificate issued by the Client in accordance with Sub-Clause 2.4.
- 1.1.4.3 “Force Majeure” is defined in Sub-Clause 3.3.
- 1.1.4.4 “Laws” means all national or state legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.4.5 “Project” is the project, specified in the PCC.
- 1.1.4.6 “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum for the carrying out any part of the Services, as per Sub-Clause 7.6.
- 1.1.4.7 “Site” is the site, specified in the PCC, where the Services are provided.
- 1.1.4.8 “Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Consultant by the Base Date.

1.2 Interpretation

Interpretation of the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing; and
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

The headings shall not limit, alter or affect the meaning of this Contract.

1.3 Relationship between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant has complete charge of the Consultant’s Personnel and shall be fully responsible for their actions and the Services performed by them or on their behalf hereunder.

1.4 Entire Agreement

The Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

1.5 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.6 Contract Agreement

Unless the Party agree otherwise in writing, they shall enter into a Contract Agreement within the period of time, specified in the documents, governing the procurement process, under which the Tender was submitted. The Contract Agreement shall be based upon the form annexed to these terms and conditions. The costs of stamp duties and similar charges (if any) imposed by Laws in connection with entry into the Contract Agreement shall be borne by the Client.

1.7 Priority of Documents

Unless otherwise stated in the Contract Agreement, the documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement;
- (b) the Letter of Acceptance;
- (c) the Letter of Tender;
- (d) the Particular Conditions;

- (e) these General Conditions;
- (f) the Requirements;
- (g) the Schedules;
- (h) the Consultant's proposal.

If an ambiguity or discrepancy is found in the documents, the Client shall issue any necessary clarification or instruction.

1.8 Non-waiver

Subject to the conditions stipulated in this Sub-Clause below, no relaxation, forbearance, delay, or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other, shall prejudice, affect, or restrict the rights of that Party under the Contract, neither shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

Any waiver of a Party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

1.9 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party; and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.10 Joint and Several Liability

If the Consultant is a joint venture, consortium, or association (the "JVCA") of two or more persons, all such persons shall be jointly and severally bound to the Client for the fulfilment of the provisions of the Contract, and shall designate one of such persons to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Client.

1.11 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realisation of the objectives of this Contract.

1.12 Laws Governing Contract

The Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws specified in the PCC, hereinafter referred to as the Governing Laws.

1.13 Language

The Contract has been executed in the language specified in the PCC, which, unless otherwise agreed by the Parties in writing, shall be the binding language for all matters relating to the meaning or interpretation of this Contract.

1.14 Communications

Unless otherwise specified in the PCC, all communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Sub-Clause 1.13.

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the PCC; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the PCC. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates and consents shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.

A Party may change the address for notice hereunder by giving the other Party a written notice of such change.

1.15 Authorised Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the PCC.

1.16 Location

The Services shall be performed at such locations as are specified in the Requirements and, where the location of a particular task is not so specified, at such locations, whether in the Client's Country or elsewhere, as the Client may approve.

1.17 Confidentiality

Unless otherwise stated in the PCC, the Consultant shall treat, and shall cause the Consultant's Personnel, the Subcontractors and the Experts to treat, the details of the Contract as private and confidential, except to the extent necessary to carry out the Consultant's obligations under the Contract or to comply with the Governing Laws. The Consultant, the Consultant's Personnel, the Subcontractors or the Experts shall not publish or disclose any particulars or results of the Services without the prior written consent of the Client. However, the Consultant is permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects or contracts.

Notwithstanding the above, the Consultant may furnish to its Subcontractors such documents, data and other information it receives from the Client to the extent required for Subcontractors to perform their services under the Contract, in which event the Consultant shall obtain from such Subcontractors undertakings of confidentiality similar to that imposed on the Consultant under this Sub-Clause.

The Consultant shall disclose all such confidential and other information as the Client may reasonably require in order to verify the Consultant's compliance with the Contract.

2. COMMENCEMENT, MODIFICATIONS, COMPLETION

2.1 Effectiveness of Contract

The Contract shall come into force and effect on the Effective Date upon the date of the Client's notice to the Consultant confirming that the effectiveness conditions, if any, listed in the PCC have been met; instructing the Consultant to commence the Services and stating the Commencement Date.

Unless otherwise stated in the PCC, if the Contract has not become effective within one hundred and eighty (180) days after the date of Contract signature, either Party may, by not less than twenty eight (28) days written notice to the other Party, declare the Contract to be null and void. Upon issuing such declaration by a Party, neither Party shall have any claim against the other Party with respect hereto.

2.2 Commencement of Services

Upon receiving the notice issued by the Client in accordance with Sub-Clause 2.1, the Consultant shall confirm availability of the Key Experts and commence the Services on or before the Commencement Date.

2.3 Amendments and Modifications of Contract

Any amendment or modification to the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification made by the other Party.

2.4 Completion of Contract

Unless the Contract is terminated pursuant to Sub-Clause 3.2, the Contract shall be deemed completed upon completion of the performance of the Consultant's obligations, and the Client's effecting the final payments under the Contract.

The performance of the Consultant's obligations shall not be considered to have been completed until the Client has issued the Completion Certificate to the Consultant, stating the date on which the Consultant completed his obligations under the Contract.

3. SUSPENSION AND TERMINATION

3.1 Suspension

The Parties may suspend implementing their obligations under the Contract in accordance with the below provisions:

3.1.1 Suspension by the Client

The Client may, by giving a respective written notice to the Consultant, suspend payments to the Consultant hereunder, if the Consultant fails to perform any of its obligations under the Contract, including the carrying out of the Services.

Such notice of suspension shall specify the nature of the failure by the Consultant, and request the Consultant to remedy such failure within a reasonable period, which in any case shall not exceed twenty eight (28) days (or a longer period, as the Parties may have agreed in writing) upon receipt by the Consultant of the notice.

3.1.2 Suspension by the Consultant

If the Client fails to comply with Sub-Clause 7.5, the Consultant may, after giving not less than twenty eight (28) days written notice to the Client, suspend the Services (or reduce the activities) unless and until the Consultant has received the payment due.

The Consultant's action shall not prejudice his entitlements to financing charges under Sub-Clause 7.5 and to termination under Sub-Clause 3.2.2.

If the Consultant subsequently receives payment giving a notice of termination, the Consultant shall resume normal working as soon as is practicable. If the Consultant suffers delay and/or incurs cost as a result of suspending Services (or reducing the activities) in accordance with this Sub-Clause, the Consultant shall give notice to the Client and shall be entitled to (a) a proportionate extension of time for any such delay, if completion is or will be delayed, and/or (b) payment of the appropriate documented costs.

3.2 Termination

The Contract may be terminated by either Party as per the below provisions:

3.2.1 Termination by the Client

The Client may terminate the Contract in case of the occurrence of any of the events specified below:

- (a) if the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Sub-Clause 3.1.1;
- (b) if the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any laws for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) if the Consultant fails to comply with any binding or final decision reached as a result of dispute resolution proceedings pursuant to Sub-Clause 8.2;
- (d) If as the result of Force Majeure, the Consultant is unable to perform the Services for a period of more than fifty six (56) days;
- (e) if the maximum amount of the delay damages, pursuant to Sub-Clause 4.9 has been reached;
- (f) if the Consultant fails to confirm availability of the Key Experts, as part of its obligations under Sub-Clause 2.2;
- (g) if the Client determines, based on reasonable evidence, that the Consultant is in breach of his obligations under Sub-Clause 4.6; or
- (h) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

In case of the occurrence of any event referred to above the Client shall give a written notice of termination to the Consultant at least twenty eight (28) days prior to termination in case of the events referred to in paragraphs (a) through (d); or at least fourteen (14) days - in case of the event referred to in paragraphs (e) through (f); or at least fifty six (56) days - in case of the event referred to in paragraph (g).

3.2.2 Termination by the Consultant

The Consultant may terminate this Contract, by giving a written notice of termination to the Client at least twenty eight (28) days prior to termination in case of the occurrence of any of the events specified below:

- (a) if the Client fails to pay any money due to the Consultant pursuant to the Contract and not subject to dispute pursuant to Sub-Clause 8.2 within fifty six (56) days after receiving written notice from the Consultant that such payment is overdue;
- (b) if as the result of Force Majeure, the Consultant is unable to perform the Services for a period of not less than fifty six (56) days;
- (c) if the Client fails to comply with any binding or final decision reached as a result of dispute resolution proceedings pursuant to Sub-Clause 8.2; or
- (d) if the Client is in material default of its obligations under the Contract and has not remedied the default within twenty eight (28) days (or a longer period, as the Parties may have agreed in writing) following the receipt by the Client of the Consultant's notice specifying such default.

3.2.3 Cessation of Rights and Obligations

Upon termination of the Contract pursuant to Clause 3.2 hereof, or upon completion of the Contract pursuant to Sub-Clause 2.4, all rights and obligations of the Parties hereunder shall cease, except for:

- (a) such rights and obligations as may have accrued on the date of termination or completion;
- (b) the obligation of confidentiality set forth in Clause 1.17;
- (c) the Consultant's obligation to permit inspection and auditing of their accounts and records set forth in Clause 3.8; and
- (d) any right which a Party may have under the Governing Laws.

3.2.4 Cessation of Services

In an event of termination of the Contract pursuant to Sub-Clauses 3.2, immediately upon dispatch or receipt of a notice of termination the Consultant shall take all necessary actions to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep respective costs to a minimum. With respect to documents prepared by the Consultant and, where applicable, equipment and materials procured by the Consultant or facilities, equipment and materials, furnished by the Client, the Consultant shall proceed as provided by Sub-Clauses 4.12, 4.13 and 6.4, as appropriate.

3.2.5 Payment upon Termination

Upon termination of the Contract, the Client shall make the following payments to the Consultant:

- (a) payment for the Services satisfactorily performed prior to the effective date of termination;
- (b) where applicable, any reimbursable expenditures, actually incurred by the Consultant prior to the effective date of termination; and
- (c) in the case of termination pursuant to paragraphs (d) and (e) of Sub-Clause 3.2.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Contract, including the cost of repatriation of the Experts, where appropriate.

3.3 Force Majeure

3.3.1 Force Majeure Definition

In this Contract, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control;

- (b) which such Party could not reasonably have provided against before entering into the Contract;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Consultant's Personnel and Subcontractors;
- (iv) munition of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Consultant's use of such munitions, explosives, radiation or radio-activity; and
- (v) natural catastrophes such as earthquake, fires, floods, hurricane, typhoon or volcanic activity.

Notwithstanding the above, Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party's Personnel, Subcontractors or agents, nor a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder. Equally, Force Majeure shall not include insufficiency of funds or failure to make any payment under the Contract.

3.3.2 Failure due to Force Majeure

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

3.3.3 Measures to be Taken

A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) demobilise, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or

- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause 8.

4. OBLIGATIONS OF CONSULTANT

4.1 General Obligations

The Contractor shall perform the Services in accordance with the Contract and, where appropriate following the Client's instructions.

4.2 Standard of Performance

The Consultant shall carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.

The Consultant shall employ and provide such qualified and experienced Experts and Subcontractors as are required to carry out the Services.

4.3 Time for Completion

The Consultant shall complete the Services or any part thereof where a separate Time for Completion of such part is specified in the Contract, within the Time for Completion, specified in the PCC, or within such extended time to which the Consultant shall be entitled under the conditions of the Contract.

4.4 Compliance with Laws

The Consultant shall, in performing the Contract, comply, and cause the Consultant's Personnel and Experts to comply, with the Governing Laws.

Unless otherwise stated in the PCC:

- (a) the Client shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Client's Country which
 - (i) such authorities or undertakings require the Client to obtain in the Client's name, and
 - (ii) are necessary for the execution of the Contract, including those required for the performance by both the Consultant and the Client of their respective obligations under the Contract;
- (b) the Consultant shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Client's Country which such authorities or undertakings require the Consultant to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Consultant's and Subcontractor's personnel and entry permits for all imported Consultant's equipment. The Consultant shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Client under Sub-Clause 4.4 (a) hereof and that are necessary for the performance of the Contract.

The Consultant shall indemnify and hold harmless the Client from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such Laws by the Consultant or its personnel, including the Subcontractors and their personnel.

Throughout the execution of the Contract, the Consultant shall comply with the Client's Country import regulations and prohibitions in respect of the services and goods, as appropriate.

The Client may notify the Consultant in writing of local traditions and customs, which the Consultant shall respect.

4.5 Subcontractors

The Consultants shall not subcontract the whole of the Services.

The Consultants shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Consultants.

Unless otherwise stated in the PCC:

- (a) the Consultant shall not be required to obtain a prior consent to a subcontract for which the Subcontractor was named in the Tender;
- (b) the prior consent of the Consultant shall be obtained to other proposed Subcontractors;
- (c) the Consultant shall give the Client not less than seven (7) days notice of the intended date of the commencement of each Subcontractor's services; and
- (d) each subcontract shall include provisions which would entitle the Client to require the subcontract to be assigned to the Client in the event of termination under Sub-Clause 3.2.1.

The Consultant shall ensure that the requirements imposed on the Consultant by Sub-Clause 1.17 apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for consultants from the Client's Country to be appointed as Subcontractors.

4.6 Conflict of Interests

The Consultant shall hold the Client's interests paramount, without any consideration for future services or connected work or supplies, and strictly avoid conflict with other assignments, activities, or own corporate interests.

The payment of the Consultant pursuant to Clause 7 shall constitute the Consultant's only payment in connection with this Contract and the Consultant shall not accept for its benefit any trade commission, discount or similar payment in connection with activities pursuant to the Contract or any connected services, works or supply; or in the discharge of its obligations hereunder. The Consultant shall use its best efforts to ensure that any Subcontractors, as well as the Experts and agents of either of them, similarly shall not receive any such additional payments, discounts or trade commissions.

Unless otherwise stated in the PCC, the Consultant agrees that, during the term of this Contract and after its completion or termination, the Consultant and any entity affiliated with the Consultant, as well as any Subcontractor or any entity affiliated with such Subcontractor, shall not be eligible to provide goods, works or any services under the Project, that may be deemed to result from or to be directly related to the Services.

The Consultant shall not engage, and shall cause its Experts as well as its Subcontractors not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

The Consultant has an obligation and shall ensure that its Experts and Subcontractors have an obligation to disclose any situation of actual or potential conflict of interest that may impact their capacity or ability to serve the best interest of the Client, or that may reasonably be perceived as having such effect. Failure to disclose said situations may lead to termination of the Contract under Sub-Clause 3.2.1.

4.7 Liability of the Consultant

Unless otherwise specified in the PCC, the Consultant's liability under the Contract shall be determined in accordance with the Governing Laws.

Notwithstanding the above, the maximum amount payable by the Consultant to the Client in respect of any and all liability in connection with the Contract shall not exceed the Contract Price.

4.8 Insurance to be Taken out by the Consultant

The Consultant shall take out and maintain at its own cost, and shall cause any Subcontractor to take out and maintain at their cost insurance against the risks, and for the coverage specified in the PCC on terms and conditions acceptable to the Client.

The Consultant shall ensure that such insurance is in place prior to Commencement Date and valid until the anticipated time for completion of the Services.

Within seven (7) days of the Client's request, the Consultant shall provide documentary evidence that such insurance has been taken out and is maintained with the required premiums have been paid.

4.9 Completion Time Guarantees

If the Consultant fails to complete the Services or any part thereof within the Time for Completion in accordance with Sub-Clause 4.3 for reasons not attributable to the Client or any third party, if they are listed in the PCC, the Consultant shall pay to the Client delay damages in the amount specified in the PCC as a percentage rate of the Contract Price or the relevant part thereof. Alternatively, the amount of the respective delay damages may be deducted by the Client from any monies due to the Consultant.

The aggregate amount of such delay damages shall in no event exceed the maximum amount specified in the PCC as a percentage rate of the Contract Price. Once the maximum is reached, the Client may terminate the Contract, pursuant to Sub-Clause 3.2.1.

Such payment shall completely satisfy the Contractor's obligation to complete the Services or the relevant part thereof within the Time for Completion or any extension thereof. The Consultant shall have no further liability whatsoever to the Client in respect thereof.

However, the payment of delay damages shall not in any way relieve the Consultant from any of its obligations to complete the Services or from any other obligations and liabilities under the Contract.

If the Consultant complete the Services or any part thereof before the Time for Completion or any extension thereof, as stated in Sub-Clause 4.3, the Client shall pay to the Consultant a bonus in the amount specified in the PCC. The aggregate amount of such bonus shall in no event exceed the maximum amount specified in the PCC.

4.10 Accounting and Auditing

The Consultant shall maintain all books, documents and records related to the Contract in accordance with applicable laws.

The Consultant shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Services in such form and details, as may reasonably be requested by the Client for the purposes of the Contract administration and management.

The Consultant shall permit the auditors appointed by the Client to inspect the Consultant's accounts and records relating to the performance.

4.11 Reporting Obligations

The Consultant shall submit to the Client the reports and documents completed with sufficient details in the form, numbers and within the periods specified in the Requirements and in accordance with the Tender, as per Schedule, Reports and Documents, appended to the Contract.

4.12 Proprietary Rights

Unless otherwise stated in the PCC, all reports, relevant data and information such as maps, designs, specifications, diagrams, drawings, plans, computer software and databases, other documents, supporting records or materials compiled or prepared by the Consultant for the Client in the course of the Services shall become and remain the property of the Client.

Not later than twenty eight (28) days upon completion or termination of the Contract, the Consultant shall deliver all such documentation and relevant records to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such reports, relevant data and information but shall not use them for purposes unrelated to the Contract without prior written consent by the Client.

If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any of the above mentioned reports, relevant data and information, the Consultant shall obtain the Client's prior written consent to such agreements, and the Client shall be entitled, at its discretion, to recover the costs related to the development of the documentation or products concerned.

Unless otherwise stated in the PCC, all intellectual property rights, including any patents and their application, trademarks, trade secrets, registered designs and their application, copyrights, design rights, moral rights, process, formula, specifications, drawings, rights in computer software and databases, held electronically or otherwise created by the Consultant during the performance of the Services shall be vested with the Consultant.

The Consultant shall grant to the Client an royalty-free worldwide licence to use and copy the above mentioned intellectual property for any purpose in connection with the Project and its results.

4.13 Equipment and Materials

Equipment and materials procured by the Consultant wholly or partly with funds provided by the Client under the Contract, shall be the property of the Client and shall be marked accordingly. Within fourteen (14) days upon completion or termination of the Contract, the Consultant shall make available to the Client an inventory of equipment and materials and shall dispose such equipment and materials in accordance with the Client's instructions. While in possession of the equipment and materials, the Consultant, unless otherwise instructed by the

Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

Unless otherwise stated in the PCC, the Consultant shall be responsible for each item of equipment and materials, whilst any of the Consultant's Personnel is operating, directing it or in possession or control of it.

Any equipment or materials brought by the Consultant or the Experts into the Client's Country for the use either for the Contract, the Project or personal reasons shall remain the property of the Consultant or the Experts concerned, as applicable.

5. CONSULTANT'S EXPERTS AND SUBCONTRACTORS

5.1 Engagement of Experts and Subcontractors

The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Experts and Subcontractors are specified in Schedule, Personnel, appended to the Contract, as appropriate.

If additional services are required beyond the scope of the Services specified in the Requirements, the estimated time-input for the Experts or Subcontractors and auxiliary inputs may be increased or additional Experts or Subcontractors may be engaged and auxiliary inputs may be provided by a written agreement between the Parties.

If during execution of the Contract a new Expert or Subcontractor is proposed to carry out the Services, the Consultant shall submit to the Client, at least twenty one (21) days prior to the intended date of engagement, a written request and a Curricula Vitae (CV) of the Expert or information on qualification and experience of the Subcontractor, as appropriate, for review and approval.

If the Client considers the intended new Expert or Subcontractor to be unsuitable, he shall raise reasonable objection against such new Expert or Subcontractor, as appropriate, by a written notice to the Consultant, with supporting particulars, and the Consultant shall provide an alternative Expert or Subcontractor.

If the Client does not object within fourteen (14) days from the date of receipt of the Consultant's request and information, such new Expert or Subcontractor shall be deemed to have been approved by the Client.

5.2 Replacement of Key Experts and Subcontractors

Except as the Client may otherwise agree in writing, no changes shall be made in respect of the Experts or Subcontractors, listed in Schedule, Personnel, appended to the Contract.

Notwithstanding the above, the substitution of Experts or Subcontractors during Contract execution may be made

- (a) if the Client considers that an Expert or Subcontractor is incompetent or incapable in discharging assigned duties, or otherwise unsuitable for the Contract, and upon a written request of the Client supported by detailed particulars; or
- (b) only due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity of an Expert and upon a written request of the Consultant supported by detailed particulars.

In such case, subject to the conditions set forth in Sub-Clause 5.1, the Consultant shall forthwith provide as a replacement, an Expert or Subcontractor with equivalent or better qualifications and experience, and at the same rate of remuneration or price of the Expert or the Subcontractor to be replaced.

The Consultant shall bear all costs arising out of replacement of Experts or Subcontractors.

5.3 Working Hours, Overtime, Leave, etc.

No Services shall be provided on locally recognised days of rest or outside during the normal working hours stated in the PCC or the Requirements, unless otherwise explicitly stated in the Contract or agreed between the Parties in writing.

To account for travel time to/from the Client's Country, Experts located outside the Client's Country carrying out Services within it shall be deemed to have commenced or finished their engagement in respect of the Services one day of their arrival in, or one day after their departure from the Client's Country, where appropriate.

The Consultant's remuneration shall be deemed to cover any overtime, paid or other leaves of the Experts.

The Consultant shall ensure that absence of any Expert will not delay the progress of and or impact the Services.

6. OBLIGATIONS OF CLIENT

6.1 Assistance and Exemptions

Unless otherwise specified in the PCC, the Client shall use its best efforts to:

- (a) assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services;
- (b) assist the Consultant, the Experts and the Subcontractors, as appropriate, with their meeting any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's Country, or, where provided by the Governing Laws, with obtaining exemptions from the above requirements;
- (c) assist the Consultant with obtaining for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's Country while carrying out the Services under the Contract;
- (d) assist the Consultant with prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents;
- (e) issue to the authorities all such requests, notices and information as may be necessary or appropriate for the prompt and effective implementation of the Services; and
- (f) provide to the Consultant any such other assistance, as specified in the PCC.

6.2 Access to Project Site

The Client warrants that the Consultant shall have, free of charge, unimpeded access to the Site in respect of which access is required for the performance of the Services.

The Consultant will indemnify the Client against and from all damages, losses and expenses (including legal fees and expenses) resulting from any unnecessary or improper use of the Site, wilful default or negligence of the Consultant, the Experts or the Subcontractors.

6.3 Change in the Governing Laws Related to Taxes and Duties

If, after the Base Date, there is any change in the Governing Laws with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the amounts payable to the Consultant under the Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract Price.

6.4 Services, Facilities and Equipment of the Client

Where provided for in the Requirements or Schedule, the Client's Inputs, appended to the Contract, the Client shall make available to the Consultant for the purposes of the Services and free of any charge the services, facilities, equipment and materials, at the times and in the manner specified therein.

Unless otherwise stated in the PCC, the Consultant shall keep facilities, equipment or materials under his care, custody and control and be responsible for them, whilst any of the Consultant's Personnel is using, operating, directing them or in possession or control of them.

In case that such services, facilities, equipment or materials shall not be made available to the Consultant as and when specified above, the Parties shall agree on

- (a) any time extension that may be appropriate for the performance of the Services;
- (b) the manner in which the Consultant shall procure any such services, facilities, equipment or materials from other sources; and
- (c) the additional payments, if any, to be included in the Contract Price, as a result thereof.

Within fourteen (14) days upon completion or termination of the Contract, the Consultant shall return to the Client facilities, equipment or materials, made available to the Consultant by the Client in accordance with the Client's instructions.

6.5 Counterpart Personnel

Where provided for in the Requirements or Schedule, the Client's Inputs, appended to the Contract, the Client shall make available to the Consultant free of charge the designed counterpart personnel.

If counterpart personnel are not provided by the Client to the Consultant as and when specified therein, the Parties shall agree on

- (a) any time extension that may be appropriate for the performance of the Services;
- (b) the manner in which the Consultant shall carry out the affected part of the Services; and
- (c) the additional payments, if any, to be included in the Contract Price, as a result thereof.

The counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant.

If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to do so.

6.6 Payment Obligations

In consideration of the Services performed by the Consultant under the Contract, the Client shall make such payments to the Consultant and in such manner as provided for in Clause 7.

7. PAYMENTS

7.1 Contract Price

The Client shall pay to the Consultant for the Services lump sums, remuneration and reimbursable expenditures, as appropriate, as well as other amounts that become due under the Contract.

The Contract Price and its breakdown is provided in the Price Schedule.

Unless otherwise stated in the PCC, the Contract Price or any of its components are fixed for the duration of the Contract.

7.2 Taxes and Duties

Unless stated otherwise in the PCC, the Consultant, the Consultant's Personnel, the Experts and the Subcontractors shall pay all taxes, duties and fees required to be paid by them under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 6.3 and Sub-Clause 7.1, as appropriate.

7.3 Lump Sums, Remuneration and Reimbursable Expenditures

All payments shall be at the rates and lump sums set forth in the Price Schedule.

The lump sum amounts due to the Consultant for the Services shall be payable on successful completion of respective activities or delivering agreed results, and determined on the basis of the sums stated in the Price Schedule for such activities or results.

The amounts due for remuneration shall be determined on the basis of time actually spent by the Experts in the performance of the Services after the Commencement Date, or such other date as the Parties shall agree in writing.

The remuneration rates shall cover:

- (a) salaries and allowances as the Consultant have agreed to pay to the Experts, including all social charges and overheads;
- (b) the cost of backstopping by home office staff not included in the Experts list;
- (c) the Consultant's other overheads and profit; and
- (d) any other items, as specified in the PCC.

The amounts due for reimbursable expenditures shall be calculated based on expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.

7.4 Currency of Payment

Unless otherwise stated in the PCC, the currencies in which payments shall be made to the Consultant under this Contract shall be those in which the Tender price is expressed.

7.5 Invoicing and Payment

The Contract Price shall be paid as specified in the PCC.

The Consultant's request for payment shall be made to the Client in writing, accompanied by invoices describing the Services performed and the documents specified in the PCC.

Payments shall be made promptly by the Client within the time period specified in the PCC into the bank accounts, nominated by the Consultant and explicitly stated in the Contract Agreement.

In the event that the Client fails to pay the Consultant any payment within the period stated above, the Client shall pay to the Consultant financing charges equal to the interest on the amount of such delayed payment at the rate stated in the PCC, for the period of delay, until payment has been made in full.

7.6 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part

- (a) in accordance with the Client's instructions, or for any adjustments made in accordance with Sub-Clause 6.3 or Sub-Clause 7.1. The total sum paid to the Contractor shall include only such amounts for the additional services and charges to which the Provisional Sum relates, as the Parties agreed in accordance with Sub-Clause 2.3 and the Client have instructed; or
- (b) for any adjustments made in accordance with Sub-Clause 6.3 or Sub-Clause 7.1.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

The Parties shall seek to resolve any dispute amicably by mutual consultations.

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written notice of dispute to the other Party, stating a reason and supporting it by detailed particulars. The Party receiving such notice of dispute shall consider it and respond in writing within fourteen (14) days after receipt and the authorised representatives of the Parties shall meet in order to attempt to resolve the dispute amicably.

If a Party fails to respond to the notice of dispute within fourteen (14) days, or the dispute is not resolved within twenty eight (28) days of receipt of the notice, then either Party may invoke the dispute resolution mechanism in accordance with Sub-Clause 8.2.

8.2 Dispute Resolution

Any dispute between the Parties arising under or related to the Contract that cannot be resolved amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the PCC.